

INDIAN TECHNOLOGY MEDIATION AND ARBITRATION CENTER
(ITMAC)

The Indian Technology Mediation and Arbitration Center (ITMAC) is India's first and niche Mediation And Arbitration Center dedicated to Information Technology and Domain Names. It has requested ICANN to consider its functions and merits and approve its proposal to be recognized as a dispute resolution service provider under UDRP.

ITMAC is chaired by Mr. Pavan Duggal who is India's ace cyber lawyer. Mr. Duggal has been a Member of the Nominating Committee and the Membership Advisory Committee and Membership Implementation Task Force of ICANN. Mr. Duggal is also a member of the WIPO Arbitration and Mediation Center Panel of Neutrals and has adjudicated various matters. He had been a Panelist for domain name disputes with the Asian Domain Name Dispute Resolution Centre(ADNDRC). Mr. Duggal is the Founder of cyberarbitration, an online system of alternative dispute resolution.

Besides Mr. Duggal is associated with Afilias, which provides complete back-office services for all registry management needs to National Internet Exchange of India, which provides registration in .IN domain names. Afilias is also the registry services provider to .Info TLD

ITMAC has numerous panelists who are experts in the field of Intellectual Property & Technology law, as also Technology . ITMAC regularly interacts with its panelists and hopes to organize public consultations and hold internal discussions on various issues pertaining to Intellectual Property and IDN's.

ITMAC has developed procedures to deal with multilingual administration of dispute resolution. ITMAC has the capability to administer disputes pertaining to domain names in various languages including English, Hindi, Tamil, Bengali, Punjabi, Urdu, Marathi, Malayalam, Gujrati, Oriya, Kannada, Telegu etc.

I. OVERVIEW OF CAPABILITIES OF ITMAC

1. About ITMAC

ITMAC is located in New Delhi, India and is chaired by Mr. Pavan Duggal. Its panel members are currently doing a number of arbitrations relating to commercial and technological legal aspects of various disputes.

2. Experience Related To Domain Name Dispute Resolution

The panel at ITMAC is currently under revision. Some of the members have handled various disputes relating to domain names, in different capacities, including as arbitrators/ Members of the Panel of Neutrals of different organizations like World Intellectual Property Organization, Asian Domain Name Dispute Resolution Centre etc

3. Participation and Cooperation with Organizations pertaining to domain names

ITMAC is chaired by Mr. Pavan Duggal who is India's ace cyber lawyer and is also a member of the WIPO Arbitration and Mediation Center Panel of Neutrals and has adjudicated various matters.

ITMAC hopes to cooperate with various other international organizations, which are connected with domain names, as also those organizations, which are working in the areas of IDNs.

4. Multiple Languages

ITMAC is capable of providing administration of UDRP disputes in multiple languages in India and the Indian sub-continent viz. English, Hindi, Tamil, Bengali, Punjabi, Urdu, Marathi, Malayalam, Gujrati, Oriya, Kannada, Telegu etc.

ITMAC is further gearing itself for domain name dispute resolution for IDNs as and when they arrive. IDNs have distinct legal issues concerning them and ITMAC , being an

Indian organization with Indian arbitrators, speaking different languages, would be well poised to add substantial value addition , when it would come to the field of IDN dispute resolution mechanism.

5. **Office of ITMAC**

The office of ITMAC is situated at N-2, Third Floor, Green Park Extension, New Delhi-110049, India.

6. **Fees**

ITMAC would adopt the fee structure of the current UDRP providers. The proposed fee structure of ITMAC is enclosed herewith.

7. **Advisory Board of ITMAC**

The Advisory Board of ITMAC is currently being constituted. It is proposed to include therein various thought leaders, government officials, corporate leaders, members of the legal fraternity, retired judges , technologists and policy makers in the same.

II. **List Of Panelists**

The initial list of Panelists is enclosed herewith.

III. **Training Policy**

ITMAC is alive to the need of having a training policy to achieve the highest standards. The training policy shall include organizing seminars, providing an on-line platform for enabling discussion among the panelists

IV. **Team**

The ITMAC team is headed by its chair, Mr. Pavan Duggal.

While a practicing Advocate, Supreme Court of India, Pavan Duggal has made an immense impact with an international reputation as an expert and authority on Cyberlaw and E-Commerce law.

As such, his empanelment as a consultant to UNCTAD and UNESCAP on Cyberlaw and Cybercrime respectively, membership of the AFACT Legal Working Group of the UN / CEFAT, consulting as an expert with the Council of Europe on Cybercrime , inclusion in the Board of Experts of European Commission's Dr. E-Commerce and his work as an expert authority on a Cyberlaw primer for e-ASEAN Task Force and as a reviewer for Asian Development Bank speaks volumes of his worldwide acceptance as an authority. Pavan is the President of Cyberlaw Asia, Asia's pioneering organization committed to the passing of dynamic Cyberlaws in the Asian continent. Pavan is also a member of the WIPO Arbitration and Mediation Center Panel of Neutrals.

Pavan has been the Member of the Public Interest Registry's. Org Advisory Council. He is a member of ICT Policy and Governance Working Group of the UNICT Taskforce. He is the Legal and Policy Consultant to Internet Mark 2 Project, which is examining the next level of Internet. He has been invited to be an Associated fellow of the Centre for Asia Pacific Technology Law and Policy (CAPTEL) at Singapore. Pavan is a member of Panel of Arbitrators of the Regional Centre for Arbitration, Kuala Lumpur and Asian Domain Names Dispute Resolution Centre at Hong Kong.

He has been associated with the Ministry of Communication and Information Technology, Government of India on Cyberlaw and Electronic Governance legal issues. He is a member of Advisory Committee on E-Governance in Karnataka constituted by the Government of Karnataka. Pavan is a member of Information Forensic Working Group on e-Information Systems, Security and Audit Association.

Pavan heads his niche law firm Pavan Duggal Associates, which has practice areas, amongst others, in Cyberlaw, Business Process Outsourcing Law, Intellectual Property

Rights and Information Technology Law , Information Security Law, Defence, Biotech and Corporate Law.

While he has been a Member of the Nominating Committee, Membership Advisory Committee and Membership Implementation Task Force of ICANN, Pavan is also the President of Cyberlaws.Net, which is Internet's first ever-unique Cyberlaw consultancy. In addition to that, he is also the founder of the Cyberlaw Association and is also the Founder-President, Cyberlaw India.

Some outstanding pioneering work in the field of BPO legal issues has resulted in his being a member of the BPO Steering Committee of ASSOCHAM. Today, he advises a number of BPO concerns on different legal issues relating to outsourcing. Pavan is the Chairman of the Cyberlaw Committee of ASSOCHAM and works in closely with CII and FICCI.

Pavan is a regular on the lecture circuit. He has spoken at over 900 conferences, seminars and workshops in the last seven years, and has lectured extensively in select law colleges. As a writer, he has made his mark with six books on various aspects of the law in the last six years. He has contributed a continuing weekly column on diverse aspects of the law, titled 'Brief Cases' to the Economic Times, for the last seven years.

The other members of the team consist of support staff headed by the Administrators Ms Pooja Basra and Mr. Pankaj Gupta.

V. ITMAC is committed not to prevent any of its panelists from serving as panelists for domain name disputes administered by other approved providers.

VI. Operating Procedures

The operating procedures of ITMAC are detailed in a separate document.

VII. Implementation Schedule

ITMAC intends to implement the UDRP project within 9 months from its approval by ICANN

VIII. Statement of requested limitations

ITMAC aims to increasing its capacity to administer more domain name disputes, keeping in mind the large demand for domain name dispute resolution capabilities for IDNs.

IX. Publishing Decisions

ITMAC will publish all decisions rendered by it.

Since ITMAC will administer UDRP cases in many languages all decisions will be summarized in English and significant decisions would be translated into English.

UDRP SUPPLEMENTAL RULES OF THE INDIAN TECHNOLOGY

MEDIATION AND ARBITRATION CENTRE (ITMAC)

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1. Scope/ short title and application-

- (a) These rules may be called ITMAC Rules, 2008
- (b) These rules (supplemental rules) are to be read and used in conjunction with the rules for Uniform Domain Name Dispute Resolution Policy and approved by Internet Corporation for Assigned Names and Numbers (ICANN) (hereinafter known as The Rules)
- (c) These supplemental rules shall come into application on the day of the submission of the complaint and shall apply to the administrative proceeding commenced thereby. The Supplemental Rules may be amended by the ITMAC in its sole discretion.

2. Definitions

- (a) ITMAC means Indian Technology Mediation & Arbitration Centre
- (b) The Rules means the Rules for the Uniform Domain Name Dispute Resolution Policy, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999.

- (c) The Policy means the Uniform Domain Name Dispute Resolution Policy approved by ICANN on October 24, 1999.
- (d) Class complaint means a complaint by a person on behalf of two or more right holders against a single-domain holder.
- (e) Provider means Indian Technology Mediation and Arbitration Centre
- (f) Time of filing means when-
- (i) A complaint or a request to change the language of the proceeding has been properly filed with the provider/arbitration court; and
 - (ii) The appropriate fee for the proceeding is received by the provider.
- (a) Any other word and expression used here and not defined but defined in the UDRP, shall have the same meaning respectively assigned to them in the rules provided under UDRP

3. Communications between Parties and the Centre

Unless otherwise agreed in writing beforehand with the Centre, any submission that may or is required to be made to the Centre pursuant to the Rules, the Policy and the Supplemental Rules may be made:-

The parties shall be required to adhere to communication instructions:

1. by telecopy or facsimile, with a confirmation of transmission; or
2. by postal or courier service, with postage pre-paid and documentary verification of service and, for the purposes of this sub-rule, double registered post shall constitute good service; or
3. electronically via the Internet, provided that a record of its transmission is available. For any electronic communications to an office of the Centre, the following address shall be used:- itmac@yahoo.com

All documentation submitted in paper form to the relevant Office of the Centre by the Parties shall be submitted in four (4) sets together with the original copy marked "Original".

4. The complaint-

- (a) The Complaint must include all elements listed in Paragraph 3(b) of the Rules; and must not exceed fifteen (15) pages.
- (b) The complaint may relate to more than one domain name, provided that the parties and the language of the proceeding is same. Where due inadvertently more than one complaint has been filed, the panel may club the same, in its discretion.

(c) When two complaints are received against the same domain name holder- the panel has to first decide the earlier filed complaint and suspend the later one. If the panel decides the matter in favor of the complainant than all the suspended proceedings will be terminated and any fees paid shall be reimbursed but if the panel rejects it than next will be decided.

(d) When two complaints are received against the same domain name holder, in respect of a same domain name, the panel may, in its discretion has to first decide the earlier filed complaint and suspend the later one. If the panel decides the matter in favor of the complainant than all the suspended proceedings will be terminated and any fees paid shall be reimbursed but if the panel rejects it than next will be decided.

(e) In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant must send or transmit its Complaint to the Respondent under cover of the Complaint Transmittal Cover Sheet posted on the Forum's web site.

(f) The Complaint must be sent to the Forum by e-mail at itmac@yahoo.com , and either by fax or by mail.

(g) Notification to Registrar and certification thereof.

- (i) The Complainant must provide a copy of the Complaint to the registrar of the disputed domain name at the same time the Complaint is sent to the Forum.

(ii) The Complainant must certify in the Complaint that Complainant has complied with Supp. Rule 4(e)(i).

(h) Any arguments alleging Respondent aliases must be included in the Complaint for Panel consideration.

(i) All Complaints alleging multiple aliases will be subject to an increased filing fee (see Supp. Rule 17 (a)(i)).

(ii) If the Panel determines that insufficient evidence is presented to link the alleged aliases, the domain names held by the unrelated registrants will not be subject to further consideration by that Panel; no portion of the filing fee will be refunded.

(i) The administrative proceedings will be deemed to have commenced on the date that the relevant Office of the Centre forwards the Complaint to the Respondent(s).

5. The Response

1. Within twenty (20) days of the date of commencement of the administrative proceedings, the Respondent shall submit a Response using Form R1 to the relevant Office of the Centre.
2. In accordance with Paragraph 5(b) (vii) of the Rules, the Respondent shall provide a copy of the Response to the Complainant(s).

5. Notification of complaint-

Complainant can challenge the withdrawal of his complaint due to administrative deficiency. The procedure of such a challenge shall be as follows:

- (i) The request shall be made within 5 days from receiving the information about the withdrawal and shall specify the reasons.
- (ii) The provider will acknowledge receiving of such request, subject to the fees due and will appoint a single panel to decide the request.
- (iii) Decision shall be issued within 12 days of appointment and it shall be final and no appeal can lie against it.

6. Appointment of the panel and Timing of Decision

Appointment shall be in accordance with Para (8) of the *Rules* from the *Provider's* list of Panelists.

7. Impartiality and Independence

Prior to the appointment, panelist is required to submit to provider a declaration of Independence and Impartiality by using the prescribed form.

8. Language of Proceeding

- A. In absence of an agreement between the parties, the written request can be filed before complaint that the language of the proceeding should be different than the language of the *Registration Agreement*

B. The procedure related to the request of a change of the language shall be as follows:

- (I) The request shall be in hard copy and in electronic form.
- (II) The provider will acknowledge receiving of such request if the fees is paid
- (III) The respondent is to be notified within 5 days of the request to change the language of the proceeding.
- (IV) The respondent shall have a right to submit a response within 12 days of the date of the notification. The response shall be submitted in hard and soft copy.
- (V) The provider will acknowledge receiving the response and will appoint a single panel to decide the request.
- (VI) Decision shall be issued within 12 days of appointment whether or not to allow the requested change of the language of the proceeding. It shall be final and no appeal will lie against it. It shall be communicated to the parties without delay.
- (VII) In case the complainant files complaint within 30 days of the receiving of the decision, the *Time of Filing* of the request to change the language of the proceeding shall apply with respect to the complaint, provided the appropriate fee is paid.

C. All documents including communications made shall be in the language of the proceeding. The panel may reject the documents submitted in other languages.

9. Panel Decision

A. In exceptional circumstances, appeal can be filed on the ground of conflict of a decision issued by a single panel with the *Rules*. The procedure related to the appeal shall be as follows-

1. Within 7 days from the communication of the decision to the parties, a party can notify the provider of its intention to submit an appeal.
2. Within 3 days of the notification the provider shall inform the Registrar that an appeal is to be filed against the first decision and thus the same is not final.
3. The appeal shall be submitted to provider within 10 days from notification in hard copy and in electronic form and shall specify the request of the review and reasons for the first decision being in conflict with the *Rules*.
4. The provider will acknowledge receipt of the Appeal subject to the fee paid and will notify the Respondent within 2 days of filing of the Appeal.
5. Respondent has a right to submit a Response within 14 days. It shall be submitted in hardcopy and in electronic form.
6. The provider will acknowledge receipt of the response and will appoint a three-member Panel to decide the Appeal.

7. The panel shall issue the decision within 14 days from the date of its appointment. This decision shall be final and not subject to Appeal.

B. The panel decision will meet the requirement of the *Rules* and will comply with all formal requirements.

C. In case of any error in the decision, a party may, by written notice, within 7 days; request the panel to correct the error or the *Panel* may correct any error in its own initiation within 7 days. Any such corrections will be part of the decision and shall be given to parties in writing.

10. Communication of Decisions to Parties

The provider shall inform the Parties and the concerned Registrar(s) of the panel Decision. ICANN shall be informed through its publication. Decision should be published fully on the provider's website with the Domain name in dispute, the case number and the name of the Complainant and the Respondent.

The decision shall be published in the language of the proceeding. If the proceeding was not conducted in English then the decision will be published with an unofficial copy translated in English.

11. Settlement or Other Grounds for Termination

A. If the parties wish to negotiate they can request Provider or Panel for the suspension of the Proceeding for a certain period.

B. The Panel shall terminate the proceeding if it finds that the disputed matter has been finally decided by the Court of competent jurisdiction or by Alternative Dispute Resolution.

12. Fees

The Fees applicable for administrative procedures and obligatory payment instruction should not exceed the current level of UDRP Fees of the approved providers.

13. Word Limits

The word limit for a decision shall be 5000 words. The provider shall try to adhere to the word limit.

14. Amendments

Subject to the *Rules*, the provider may amend these *Supplemental Rules* in its sole discretion.

15. Effective date.

These *Supplemental Rules* apply to all cases filed on or after.....

16. Exclusion of Liability

Except in respect of deliberate wrongdoing, the Administrative Panel, ITMAC shall not be liable to a party, a concerned registrar or ICANN for any act or omission in connection with the administrative proceeding.

LIST OF ARBITRATORS UNDER ITMAC

1. Mr. Kamal Dave
2. Mr. P K Duggal
3. Ms.Shanta Pandey
4. Mr. R B Singh
5. Mr. Vakul Sharma
6. Mr. Arun Mehta
7. Mr. Vikash Singh
8. Mr. Shamit Khemka
9. Mr. Chander Mohan Sanan
10. Mr. Jaipal Anand
11. Mr. P.N.Gupta
12. Mr. Umang Dass
13. Mr. Amitabh Singhal
14. Mr. Alok Priyadarshi
15. Mr. Sanjeet Singh
16. Mr. Atulesh Parasar
17. Miss. Shweta Shalini
18. Mr. Pavan Duggal

ANNEX A: FEE SCHEDULE
Fees of ITMAC

Number of Domain Names involved in the Complaint Single	Fee for Panelists Total Fees		ITMAC Administrative Fee	Total Fees	
	Single Panelist	Three Panelists		Single Panelist	Three Panelists
(a) 1 to 2 domain names	51,000	Presiding Panelist: 81,000 Each Co Panelist: 45,000	55000/46000	106000	217000
(b) 3 to 5 domain names	64000	Presiding Panelist: 97000 Each Co-Panelist: 54,000	61000/50000	125000	255000
(c) 6 to 9 domain names	75000	Presiding Panelist: 110000 Each Co-Panelist: 65,000	66000/54000	141000	294000
(d) 10 domain names or more			To be decided in consultation with ITMAC		
(e) Request to change language	31000		33000	64000	
(f) Challenge of withdrawal of Complaint due to administrative	31000		33000	64000	

The ITMAC will grant a 10% discount on the ADR Fees applicable to the Parties who use advanced electronic signatures to sign and file their respective procedural documents during ADR Proceedings.

The ITMAC will grant a substantial discount on ADR Fees for ADR Proceedings which have been terminated early. Specifically, when a Complaint is withdrawn in accordance

with the supplemental rules or an ADR Proceeding is terminated before the Panel has been appointed, the ITMAC will with hold a processing fee equal to the ITMAC share of the total ADR Fees and return the remainder of the ADR Fees to the respective Parties. The ITMAC will return the ADR Fees applicable for filing a challenge to the ITMAC decision to terminate an ADR Proceeding due to administrative deficiencies, if the Panel decides in favor of the Complainant.

Explanatory Notes:

(a) All the fees mentioned above are in INR including VAT on Panelist's fees.

(b) Fees for multiple domain names are applicable only for ADR Proceedings in which the same Complainant and the same Respondent are involved as the Parties and if the same language of ADR Proceeding is applicable for all the disputed domain names.

(c) ITMAC Administrative Fee for disputes (a) – (f) above is comprised of (i) a fee to cover administrative costs of the ADR Center; and (ii) a fee to cover additional costs related to administer ADR Proceedings in the language sought by the parties.

(d) All the fees are payable before respective filings by bank transfer to the following account of the ITMAC: _____